Office - Supreme Court
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ALEXANDER L. STEVAS,
CLERK

No. 82-240

In The
Supreme Court Of The United States

OCTOBER TERM, 1981

ALEXANDER THEOHAROUS
Appellant

v.

DEER RUN SHORES
PROPERTY OWNERS ASSOCIATION, INC.
Appellee

ON APPEAL FROM THE SMALL CLAIMS SESSION OF THE SUPERIOR COURT OF CONNECTICUT

JURISDICTIONAL STATEMENT
STATE CIVIL CASE

Alexander Theoharous
Appellant Fro-se
Deer Run Shores
Sherman, CT 06784
(203) 354-5772

Questions Presented

Did the court err, rendering a decision under its rules that provides "No formal written judgment shall be required, ...", by not making any findings of fact, rendering no opinion, as to any issue raised, including those issues of Constitutionality raised by the appellant, to effectively abdicate its responsibilities under the requirements of the Fifth and Fourteenth Amendments, to deprive the appellant of liberty and property?

Did the court err, in granting a judgment under its rules that provides "The judgments and decisions rendered in small claims session of the superior court are final, conclusive and nonappealable.", by not stating the reasons for granting the judgment, and for the appellant to be told, at the very least, why he lost the case or why the court ruled against him?

Did the court err, to enforce the collection of monies without ascertaining or requiring the appellee to establish the truth of their allegations in the complaint, that they had a substantive claim to enforce, to deprive the appellant of liberty and property?

Did the court err, from giving or securing the equal protection of the laws and due process to the appellant, by the failure of the appellee, its officers and employees to present any evidence to support the truth of their allegations that they had an enforceable substantive claim, and thus, in effect prevent and hinder the court on the basis of an erroneous and distorted conception of the facts, to be predisposed to find against the appellant, to deprive him of liberty and property?

Did the court err, to enforce the annual collection of money, i.e., for maintenance of a clubhouse and facilities which appellant does not own any part of, use, or want to use, merely by force of fact of being a subsequent

grantee of land within a development, to deprive the appellant of liberty and property?

Did the court err, to enforce the annual collection of money, i.e., club dues for membership in the land developer's association, to mandate membership, to make the appellant a captive member for as long as he owns property within the development, merely by force of fact of being a subsequent grantee of land, to unconstitutionally impair the freedom of association provisions of the First Amendment, secured and guaranteed by the Fourteenth Amendment, to deprive the appellant of liberty and property?

Did the court err, to enforce the annual collection of money, i.e., that increased the charges to the appellant for the use of the roadways at a different rate, than that charged others within the development, while others do not pay at all, to be discriminatory, to deprive the appellant of liberty and property?

Did the court err, to enforce the annual collection of money, i.e., club dues to compel mandatory membership in the developer's association to obtain the right to the use of a clubhouse and facilities owned and operated by the developer, its successors and assigns, whether used or not, to impose a limitation upon the use of real estate, which in effect, limits and reduces the market in which a buyer may be found and is thus, in effect, a restraint upon alienation, to deprive the appellant of liberty and property?

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Jurisdictional Statement
State Civil Case

Opinions Below

No opinion was rendered or delivered by the court.

Jurisdiction

The small claims part of the Superior Court of Connecticut is the highest State court from which a decision may be had.

The Federal Constitutional question was timely raised in the answer. Judgment was granted to the appellee on February 24, 1982. A timely motion for rehearing was filed on March 22, 1982, and denied by the court on June 16, 1982. Notice of Appeal to this Court was timely filed on June 22, 1982.

The appellant is a citizen of the State of Florida, and part time resident in Connecticut, and the appellee is a Connecticut corporation.

The original jurisdiction of the United States Supreme Court is conferred by Article III Section 2 of the Constitution of the United States. The jurisdiction to review this decision on appeal is conferred by 28 USC Section 1257 (1)(2).

Constitutional and Statutory Provisions

The First Amendment to the Constitution of the United States provides as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.".

The Fifth Amendment to the Constitution of the United States provides as follows: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb: nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use, without just compensation.".

The Fourteenth Amendment in the Constitution of the United States provides in Section 1 as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.".

Statement Of The Case

Appellee, a Connecticut membership corporation, was incorporated by certain property owners within the Deer Run Shores development in the Town of Sherman, Connecticut during January of 1979.

On January 29, 1979, the appellee purchased from the developer, Deer Run Shores Incorporated, certain parcels of land including thereon, a clubhouse, facilities and roadways within the Deer Run Shores development, and received by conveyance all right, title and interest in an instrument entitled "Deer Run Shores Incorporated-Restrictions" recorded in the Sherman Land Records on March 22, 1956.

An examination of this instrument in the Sherman Land Records, revealed that it was not for the property being developed in Deer Run Shores.

The appellant, during August of 1960, purchased property within the development from one who was not the original grantee, and was a subsequent grantee. The deed conveyed recited "Said premises are conveyed subject to Deer Run Shores restrictions and reservations of record."

An examination of the Sherman Land Records did not reveal any Deer Run Shores restrictions or reservations on file, or recorded.

The appellee immediately in 1979 increased the annual sum of money charged for club dues for membership in the developers association to obtain the right to the use of the clubhouse and facilities, and for use of the roadways, all of which were previously owned and operated by the developer.

The appellant refused either to join the association, use or want to use the clubhouse and facilities, or to pay club dues, and further refused to pay a different rate increase for use of the roadways than others were charged, or while others pay nothing at all.

The appellee sued the appellant during 1981 for past due monies, and the only allegation in the complaint was for "Common maintenance charges for road, beach, boat mooring, recreation and clubhouse facilities for years 1979, 1980 and 1981, per Deer Run Shores restrictions on file in the Sherman Town Hall, Sherman, Ct. (copies of invoices attached).", however the invoices attached only contained two charges, one for road maintenance, the other for club dues, and no copy of the Deer Run Shores restrictions was attached to prove its existence or where it was recorded.

The appellant resisted the action by asserting the above and the following to the court:

- there are no "Deer Run Shores restrictions" on file or recorded in the Sherman Land Records;

- the instrument recorded on and dated March 22, 1956 entitled "Deer Run Shores Incorporated-Restrictions" does not contain any provision or reference that it was to be applicable to, or for the property being developed in Deer Run Shores;

- one cannot be held liable for club dues when one is not a member of the association, and one cannot be made a member, merely by force of fact of being a subsequent grantee of land;

- one cannot be held liable to pay club dues for membership to obtain the right to the use of a club-house and facilities, merely by force of fact of being a subsequent grantee of land, when one does not use them or want to use them;

- one cannot be held liable to pay a sum of money for maintenance of a clubhouse facilities, and roadways, merely by force of fact of being a subsequent grantee of land, when one does not own any part of them;

- one cannot be held liable to pay a sum of money, for a personal promise of the original grantee to pay, merely by force of fact of being a subsequent grantee of land, personal promises to do an affirmative act cannot be conveyed or assigned;

- one cannot be held liable to pay a sum of money that charges one a different rate than others are charged for the same services offered within the development, to wit: to charge appellant a 62% increase for use of the roadways over the applicable base rate,

while others were increased 18%, while others pay nothing, is discriminatory;

- to enforce the claim, the court would create and enforce new property rights for the benefit of the appellee that do not exist, and the court would exceed its powers to create and enforce such property rights beyond the boundaries of the Fourteenth Amendment to the Constitution of the United States, to deprive the appellant of liberty and property;

- to enforce the claim would impose a limitation upon the use of real estate, which in effect, limits and reduces the market in which a buyer may be found and is thus, a restraint upon alienation;

- to enforce the claim predicated on maintenance rather than use, would create a burden in perpetuity, as no outside limitations have been placed on the obligation to pay money for maintenance, and purports to bind all future owners, regardless of the use to which the land is put;

- to enforce the claim to pay a sum of money for club dues for membership, would mandate membership upon appellant to compel him to be a captive member in the developer's association for as long as he owns property within the development, to unconstitutionally impair the freedom of association provisions of the First Amendment to the Constitution of the United States, to deprive the appellant of liberty and property, secured and guaranteed by the Fourteenth Amendment.

At the time the suit was scheduled for trial, the appellant was ill in Tarpon Springs, Florida, and advised not to travel. The appellant timely notified the court clerk for a continuance, and the clerk advised that judge Moraghan did not want any continuances granted. A mailogram was sent to the judge requesting a

continuance, and if it could not be granted, the appellant would have no objection to the case being determined upon the pleadings submitted or as further required by the court, without a hearing or trial. The court agreed to do so, and the appellee had no objection.

The appellant's answer not only contained a denial and affirmative defenses, but a detailed analysis of the case with appropriate case law applicable to the facts with exhibits containing documentary evidence, as the small claims session rules required an answer with reasons why one disagrees with the claim.

Appellant's denial of the essential allegations of the complaint threw upon the appellee the burden of proving the truth of their claim, the existence of the "Deer Run Shores restrictions," or the applicability and enforceability of the "Deer Run Shores Incorporated-Restrictions."

Appellees and their attorney did not produce or present any proof or evidence whatsoever to support their claim, or to establish the truth of their allegations, nor did they produce the alleged "Deer Run Shores restrictions" claimed to exist in the complaint.

The court did not require them to do so, nor to submit any memorandum or memorandum of law.

The court, made no findings of fact, rendered no opinion, as to any issue raised, including those issues of Constitutionality raised by the appellant, granted judgment to the appellee for the full amount of money claimed, plus costs, and ordered the appellant to pay within seven days.

On the motion for rehearing, the appellant pleaded for the court to at least give the reasons why judgment was granted to the appellee, and appellant was ordered

to pay within seven days. The court refused, made no comment, denied the motion, and awarded appellee additional costs.

Federal Question Is Substantial

The State of Connecticut, through its judicial authorities, acting under authority of the rules of the small claims part of the Superior Court, providing "No formal written judgment shall be required...", and "The judgments and decisions rendered in small claims session of the Superior Court are final, conclusive and non-appealable.", has deprived the appellant of procedural due process to prevent an unjustified or mistaken deprivation of liberty and property.

The court has denied the appellant the equal protection of the law, and deprived him of procedural due process, in and by, not rendering a formal written judgment to inform the appellant why he lost the case, making no findings of fact, rendering no opinion, as to any issue or issues of Constitutionality raised, not requiring appellee to substantiate the truth of their allegations after being contradicted, and at the very least, why appellant was ordered to pay money within seven days for maintenance on property he does not own any part of; and pay club dues for membership in a developers' association he is not a member of, to make him a captive member by inclusion.

The state in the enforcement of the collection of money, i.e., club dues for membership, and maintenance of another's property in which appellant does not own any part of, could not have had any compelling state need to abridge the privileges and immunities of the appellant.

The state has placed upon the appellant, a subsequent grantee, merely by force of fact of being a grantee

of land, an affirmative duty, a charge or obligation to pay money for as long as he owns property within the development, i.e., club dues for membership in a developers association to obtain the right to the use of a clubhouse and facilities owned and operated by the developer, its successors and assigns, in which the appellant does not own any part of; for maintenance on property owned and operated by the developer, its successors and assigns, in which the appellant does not own any part of; or if the facilities are used, to pay a disproportionate rate increase while others pay less or nothing at all.

The state by enforcing these obligations to pay money: reduce the potential market for buyers by imposing an undue restraint on alienation; create a burden in perpetuity as no outside limitation has been placed on the obligation to pay; purports to bind all future grantees regardless of the use to which the land is put; creates and enforces property interests beyond the boundaries defined by the Fourteenth Amendment; compels mandatory membership to unconstitutionally impair the freedom of association provisions of the First Amendment; deprives the appellant of liberty and property; places an undue burden on the appellant and others who do not use or need to use the clubhouse and facilities, i.e., for reasons of health or finances, whatever the reason may be; forces the appellant and other grantees to pay increased charges, that can be increased to any amount, that can or will require them to sell their homes and leave the development; so that those who need to use, and use the clubhouse and facilities, will pay less.

This state action is unfair and unjust.

The due process clause of the Fifth Amendment entitles a person to an impartial disinterested tribunal to safeguard the procedural due process in the preven-

tion of unjustified or mistaken deprivation of liberty and property will not be taken. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 64 L. Ed.2d 182, 100 S. Ct. 1610 (1980).

No state may effectively abdicate its responsibilities under the equal protection clause of the Fourteenth Amendment by either ignoring them or by merely failing to discharge them, whatever the motive may be. *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 6 L.Ed.2d 45, 81 S. Ct. 865 (1961).

The action of state courts and judicial officers in their official capacities, even though taken for the enforcement of private agreements, is state action within the provisions of the Fourteenth Amendment that No State shall deny to any person within its jurisdiction the equal protection of the laws. *Shelley v. Kraemer*, 334 U.S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948).

The command of the Fourteenth Amendment that no "State" shall deny to any person within its jurisdiction of the equal protection of the laws means that no agency of the state, or of the officers or agents by whom its powers are executed, shall deny to any person within its jurisdiction the equal protection of the laws; a state acts by its legislative, its executive, or its judicial authorities and is unable to act in any other way. *Cooper v. Aaron*, 358 U.S. 1, 3 L.Ed.2d 5, 78 S. Ct. 1401 (1958).

If private persons take conspiratorial action that prevents or hinders the constituted authorities from giving or securing equal treatment, the private persons would cause those authorities to violate the Fourteenth Amendment; the private persons would then have violated Section 1985(c). *Great American S & L. Assn. v. Novotny*, 442 U.S. 366, 384, 60 L. Ed.2d 957, 99 S. Ct. 2345 (1979).

A court will not and cannot compel admission of an individual into a voluntary association. *Hawkins v. North Carolina Dental Society*, 230 F. Supp. 805, 355 F.2d 718 (1966).

An individual has the right to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses. *Evans v. Newton*, 382 U.S. 296, 15 L. Ed.2d 373, 87 S. Ct. 486 (1966).

Equal protection of the laws forbids one class suffer loss to enrich another. *Regan v. Farmers Loan & T. Co.*, 154 U.S. 362, 38 L. Ed. 1014, 14 S. Ct. 1047 (1893).

Equal protection of the laws is not achieved through indiscriminate imposition of inequalities. *Shelley v. Kraemer*, 334 U.S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948).

The law discourages all restraints upon alienation. *Beley v. Naphtaly*, 169 U.S. 353, 42 L. Ed. 775, 18 S. Ct. 354 (1896).

Conclusion

The appellant, a citizen of the State of Florida, has no redress within the judicial system of the State of Connecticut.

This Court is the only hope appellant has for a redress of grievances to correct the unjustified or mistaken deprivation of his liberty and property.

The decision below should be summarily reversed, and this Court assume original jurisdiction under Article III, Section 2 of the Constitution of the United States, to prevent the deprivation of the appellant's liberty and property.

Respectfully submitted,

/s/ Alexander Theoharous

STATE OF CONNECTICUT
SUPERIOR COURT
NOTICE OF JUDGEMENT
SMALL CLAIMS SESSION

SMALL CLAIM
NOTICE OF JUDGMENT

DOCKET NO. SC3 45142

Mr. Alex Theoharous
Deer Run Trail
Deer Run Shores
Sherman, Ct. 06784

IN THE MATTER OF THE CLAIM BY the following plaintiff(s):

Deer Run Shores Property
Owners Association, Inc.
Rt. 39
Sherman, Ct 06784

Attorney for Plaintiff:

Donald A. Mitchell
107 South St.
P. O. Box 119
Danbury, Ct. 06810

JUDGMENT ENTERED: The court found judgment in favor of the plaintiff(s). This means that the Defendant(s) lost the case and must pay the Damages and Costs as follows:

1. The Defendant(s) owes $999.02 Damages and $10.00 Costs for a total of $1,009.02.

2. This payment should be made to the:
PLAINTIFF'S ATTORNEY.

3. You must pay the total amount shown above by one week from date of judgment.

2-24-82
71 Main Street, Danbury

/s/ Catherine A. Rivard
Assistant Clerk

STATE OF CONNECTICUT
OFFICE OF THE CLERK

71 Main Street, Danbury, Connecticut 06810

June 21, 1982

Alex Theoharous
Deer Run Trail
Deer Run Shores
Sherman, Ct. 06784

45142 Deer Run Shores v. Theoharous

Dear Sir:

Defendant's MOTION TO REOPEN the above captioned small claim matter was DENIED on 6-16-82. Judgment entered on 2-24-82 in the amount of $999.02 plus costs ($10. plus $25. taxed on Motion to Vacate) remains in fullforce and effect.

Very truly yours,

/s/ Lucille Edmond
Small Claims

cc: Don Mitchell, Esq.

IN THE SUPERIOR COURT OF CONNECTICUT
SMALL CLAIMS PART

ALEXANDER THEOHAROUS,
Appellant,

v. NO. SC3-45142

DEER RUN SHORES
PROPERTY OWNERS ASSOCIA-
TION, INC.,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alexander Theoharous, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Small Claims Part of the Superior Court of Connecticut overruling appellant's March 22, 1982 Motion for Rehearing on June 16, 1982, and affirming the judgment of this Court, entered in this action on February 24, 1982.

This appeal is taken pursuant to 28 U.S.C. Section 1257(1)(2). Dated: June 22, 1982.

Alexander Theoharous Pro-se
Appellant
Deer Run Shores
Sherman, Connecticut 06784
(203) 354-5772